

39-CM Document 90
SHAW FAMILY ARCHIVES, LTD., BRADFORD
LICENSING, INC., JAMES E. DOUGHERTY,
And VALHALLA PRODUCTIONS, LLC.

Filed 01/17/20

05 CV 3939 (CM)

Plaintiffs/Consolidated Defendants,

**Honorable Colleen
McMahon**

-against-

CMG WORLDWIDE, INC.,
and MARILYN MONROE, LLC.,

Defendants/Consolidated Plaintiffs

SUPPLEMENTAL DECLARATION OF DAVID M. MARCUS

David M. Marcus, pursuant to 28 U.S.C. §1746, declares as follows:

1. I am a partner with the firm of Marcus & Greben, attorneys for Plaintiff/Consolidated Defendant/Shaw Family Archives Ltd ("SFA"), Plaintiff Edith Marcus, Plaintiff Meta Stevens and Consolidated Defendant Bradford Licensing, Inc. ("Bradford"). I respectfully submit this declaration on behalf of SFA and Bradford in Reply and in further support of their Cross-Motion for Summary Judgment dismissing MMLLC and CMG's Count II.

2. In the related actions in California, Hon. Margaret M. Morrow recently issued a tentative order granted Milton H. Greene Archives, Inc. ("Greene") and Tom Kelley Studios, Inc. ("Kelley") summary judgment against the defendants. (Supplemental Declaration of Michelle Craven ("Craven Supp. Decl Exh. 2). Judge Morrow permitted Defendants permission to submit an additional narrowly tailored brief on the issue of whether Marilyn Monroe could transfer through her will a post-mortem

right of publicity which she did not won at the time of her death. In response thereto, Greene and Kelley filed a Supplemental Reply in Support of their Motion for Summary Judgment. A true and accurate copy of said supplemental Reply is annexed hereto as Exhibit A.

3. A true and accurate copy of *In Re Hunter*, 2004 SlipOp 02392 (2nd Dept.2004) is annexed hereto as Exhibit B.

4. A true and accurate copy of a Surrogates Court memorandum/decision of Judge Marie Lambert and Decree Construing Will dated April 30, 1990, is annexed hereto as Exhibit C.

5. A true and accurate copy of an Opinion of the California Board of Equalization ("BOE") in the Matter of the Appeal of *Earl F. and Helen W. Brucker*, Cal. St. Bd. of Equal., July 18, 1961 is annexed hereto as Exhibit D.

6. A true and accurate copy of the Estate of Marilyn Monroe's response to defendant Grosset & Dunlap, in the matter of *Frosch, v. Grosset & Dunlap, Inc.*, Index No. 01527/75, is annexed hereto as Exhibit E.

7. A true and accurate copy of a web page from marilynmonroe.com and a copy of Marilyn Monroe's bill from the Waldorf Astoria from July 19-July 24, 1955 is annexed hereto Exhibit F. According to the website, from April 1955 to the end of 1955, Marilyn lived at the Waldorf-Astoria Hotel at the expense of Marilyn Monroe Productions, Inc. After leaving the Waldorf-Astoria, Ms. Monroe moved to an apartment on Sutton Place in New York.

8. A true and accurate copy of a web page from marilynmonroe.com and two account statements from Colonial Trust Company for Marilyn Monroe Productions, Inc.,

for the months November and August of 1956 and a monthly bank statement from Bankers Trust Company dated April of 1961 are collectively annexed hereto as Exhibit G. The address for Marilyn Monroe Productions, Inc. is in New York City. As per the web-page, after divorcing Joe DiMaggio, Marilyn Monroe left California in December of 1954 for New York. In end of December 1954, and early January 1955, Ms. Monroe formed a production company, Marilyn Monroe Productions, LLP with photographer Milton Greene. Marilyn Monroe was appointed company president and she owned 51% of the company.

9. A true and accurate copy of an article from CBS's official website, is annexed hereto as Exhibit H. According to said article, in 1956, Marilyn Monroe filed an application with a New York City Court to changer her name from Norma Jean Mortenson to Marilyn Monroe. This application was sold at auction in 2005 by the Estate of Marilyn Monroe/MMLLC.

10. A true and accurate copy of an invoice from the Elizabeth Arden Beverly Hills salon to Marilyn Monroe, dated April 27, 1961, as annexed hereto as Exhibit I. Marilyn Monroe's address is listed as 444 East 57th Street, New York, New York.

11. A copy of a Life Magazine article by Richard Meryman, from June 1962, is annexed hereto as Exhibit J.

12. A true and accurate copy of a downloaded news article, published in Life Magazine on February 17, 1961, regarding Marilyn Monroe's treatment at the Payne Whitney Psychiatric Clinic and then Columbia Presbyterian Medical Center, is annexed hereto as Exhibit K.

13. A true and accurate copy of excerpts from a book titled "Marilyn and Me:

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Sisters, Rivals and Friends," published in 1992, written by Susan Strasberg, daughter of Lee Strasberg, are collectively annexed hereto as Exhibit L. According to Ms. Strasberg, Marilyn Monroe "fled" Hollywood to New York to make a new life, and became a part of Lee Strasberg's family in New York. (See prologue of Exhibit L).

14. Further, according to Ms. Strasberg, one of the reasons why Marilyn Monroe left Joe DiMaggio was that he bored her. (See page 16 of Exhibit L).

15. According to Ms. Strasberg, the press went crazy over Marilyn leaving Hollywood and Marilyn Monroe took "New York by storm....People like Carl Sandburg and Isak Dinesen and Truman Capote wanted to meet her." (See page 24 of Exhibit L). Marilyn felt at home in New York and, according to Ms. Strasberg, Marilyn told her that "[S]ince I came to New York, I feel I'm accepted, not as a freak, but as myself, whoever the hell that is. I'm just finding out." (See page 35 of Exhibit L).

16. In June of 1956, after Marilyn Monroe finished filming "Bus Stop," she and Paula Strasberg flew back to New York, and had just enough time to marry Arthur Miller before leaving for England to shoot "The Prince and the Showgirl." (See page 111 of Exhibit L).

17. A true and accurate copy of a Legislative History Report and Analysis from Legislative Intent Service, regarding Senate Bill 613 (now Cal. Div. Section 3344.1) is annexed hereto as Exhibit M. On page 2 of the summary, a copy of a letter from Senator Campbell to the Governor, dated August 31, 1984 is copied.

18. A true and accurate copy of the June 12, 1984 Assembly Committee on the Judiciary Minutes for Senate Bill 613 is annexed hereto as Exhibit N.

Comments for Senate Bill 613 is annexed hereto as Exhibit Q.

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20. A true and accurate copy of MMLLC's Response and Objections to SFA

and Bradford's First Demand for the Production of Documents dated December 26, 2006 is annexed hereto as Exhibit P.

21. Judicial Notice should be taken of the existence of the 2001 documentary film, AMC Original Production, produced by Kevin Burns, narrated by James Coburn and entitled "Marilyn Monroe: The Final Days" (the "Documentary"). The documentary chronicles the making of the film "Something's Got to Give" and the last few months of the life of Marilyn Monroe..

22. "Something's Got to Give," the last film to have starred Marilyn Monroe, was filmed in California in 1962 and was co-produced by Marilyn Monroe's production company, Marilyn Monroe Productions, Inc.

23. As per the Documentary, Marilyn Monroe was known to be tardy on the set on nearly every film she starred in and after her divorce with Arthur Miller, she was known to be relying heavily on pills and alcohol. Twentieth Century Fox hired her psychiatrist, Dr. Ralph Greenson, to help make sure that she made it to the set on time.

24. Production was initially delayed due to a change of producers on the film and then the by hiring and firing of several writers and numerous re-writes. Before the script was even completed, the studio had already spent well over \$300,000.00, and at the same time, Twentieth Century Fox was reeling from the production costs of Cleopatra.

25. By late March of 1962, there were only 3 weeks before principal photography was to begin. During that time, the script was being worked on and the set

was being finished. Producer Henry Weinstein's main task was to make sure Marilyn Monroe was on time. (Mr. Weinstein was interviewed in the Documentary and all references to him herein are paraphrased from his interview). (See also Craven Supp.

Decl. Exh I at Exh. L).

26. On April 10, 1962, Marilyn appeared on set for the first day of pre-production and screen tests. When Marilyn was late for a meeting with Mr. Weinstein, he went to her home and found her nearly unconscious from an overdose of sleeping pills.

27. On April 13, 1962, there was a meeting and it was determined that principal photography would be delayed to April 23rd so script could be worked on. Ms. Monroe immediately flew to New York to work on her acting with Lee Strasberg. She had been studying with Lee and Paula Strasberg for approximately seven years. Lee served as her mentor and Marilyn at times lived with Lee and his family in New York.

28. While living in New York, Marilyn sought the company of acclaimed actors and artists. She met Arthur Miller whom she later married, while living in New York.

29. After spending a week in New York, Ms. Monroe went back to resume shooting in California, but fell ill from an illness she caught from Lee Strasberg.

30. According to an interview with Eunice Murray, Marilyn Monroe's housekeeper in California, the Kennedy brothers were an important part of her life. According to Mr. Weinstein, Marilyn Monroe had a date with Bobby Kennedy and asked her what types of questions to ask him. She later confided to him that she had several other dates with Robert Kennedy and no longer needed his advice.

31. On May 17th, it was disclosed that Marilyn Monroe was leaving filming to go to New York for a couple of days to appear at President Kennedy's birthday party celebration at Madison Square Garden in New York. The studio heads did not want her to go, but she went anyway.

32. On June 8th, Marilyn Monroe was officially fired and was told she would never work again in Hollywood. Marilyn was humiliated and spent the next several weeks fighting to save her reputation and get her role in the film back.

33. From June Twentieth to July 15th, Marilyn fought back against the studio with a media blitz through interviews. According to Richard Merryman, when he visited Marilyn Monroe's Brentwood bungalow, he noticed that the house was empty, with virtually no furniture in it.

34. Marilyn Monroe received the support of her co-stars on "Something's Got to Give and they campaigned with her to get her job back. Weeks after her firing, she was re-hired by Twentieth Century Fox, provided Paula Strasberg was removed from the set and the director was replaced.

35. On August 5, 1962, Marilyn Monroe was found dead in her house. Joe DiMaggio arranged her funeral, but nothing said about any relationship with him. The Documentary never indicated that Marilyn Monroe had resumed her relationship with Joe DiMaggio, or that they had intended to remarry.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on this 15th day of January 2007, in New York, New York.



David M. Marcus